



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

Valley Regional Office

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

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Robert G. Burnley
Director

R. Bradley Chewning, P.E.
Valley Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
A SPECIAL ORDER ISSUED BY CONSENT TO
P. LEE McCAULEY

UST Facility at 2042 Garth Road, Charlottesville, Albemarle County, VA
Facility Identification No. 6015533

SECTION A: Purpose

This is a Special Order by consent issued under the authority of Va. Code §§ 62.1-44.15 (8a) and (8d) between the State Water Control Board and P. Lee McCauley to resolve certain violations of the State Water Control Law and regulations at Mr. McCauley's Underground Storage Tank Facility located at 2042 Garth Road, Charlottesville, Albemarle County, Virginia.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizen's board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
2. "Code" means the Code of Virginia (1950), as amended.
3. "UST" means underground storage tank as further defined in 9 VAC 25-580 10 and Virginia Code § 62.1-44.34:8.
4. "Mr. McCauley" means P. Lee McCauley, the UST owner within the meaning of Virginia Code § 62.1-44.34:8.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality.

7. "Facility" means the retail gasoline station and UST owned and operated by Mr. McCauley located at 2042 Garth Road, Charlottesville, Albemarle County, Virginia. The Facility has one 1,000-gallon gasoline UST installed in June 1991 and further identified as UST number 1.
8. "Order" means this document, also known as a Consent Special Order.
9. "Regional Office" means the Valley Regional Office of the Department.
10. "Regulation" means 9 VAC 25-580-10 *et seq.* (Underground Storage Tanks: Technical Standards and Corrective Action Requirements) relating to upgrading of existing UST systems, registration of tanks, closure of non-compliant tanks, and release detection requirements.
11. "Form 7530" means the UST notification form used by the DEQ to register and track UST for proper operation, closure and ownership purposes. See 9 VAC 25-580-70.

SECTION C: Findings of Fact and Conclusions of Law

1. The Regulation, at 9 VAC 25-580-10 *et seq.*, requires that the UST at the Facility meet final, specific performance requirements for leak detection, spill and overfill protection, and corrosion protection by December 22, 1998.
2. Mr. McCauley is the owner of the UST at this Facility within the meaning of Virginia Code § 62.1-44.34:8.
3. On October 23, 2001, DEQ staff conducted a formal inspection of the Facility. The following deficiencies were noted:
 - The UST was not equipped with overfill prevention equipment in apparent violation of 9 VAC 25-580-50.
 - Steel portions of the product piping had not been designed, constructed and protected from corrosion in apparent violation of 9 VAC 25-580-50.
 - Compliance records were not available for review in apparent violation of 9 VAC 25-580-120.
 - Release Detection was not being performed on the UST and its associated piping in apparent violation of 9 VAC 25-580-140.

- Financial Responsibility documentation was not available for review in apparent violation of 9 VAC 25-590-10 *et seq.*

Tank number	1
Violation	1000
9 VAC 25-580-50. 3 Overfill prevention	X
9 VAC 25-580-50 Corrosion protection	X
9 VAC 25-580-120 Compliance records	X
9 VAC 25-580-140 Release detection for tanks and piping	X
9 VAC 25-590-10 et seq. Financial Responsibility	X

As a result of this formal inspection, DEQ staff sent a Warning Letter (No. 02-01-VRO-12) to Mr. McCauley on January 16, 2002, for these apparent violations of the Regulation. The letter requested that Mr. McCauley respond in writing by January 28, 2002, and included a copy of the formal inspection results, detailing the apparent violations noted above. It also requested that Mr. McCauley contact DEQ to discuss resolution of noncompliance by way of a Letter of Agreement.

4. Despite numerous telephone communications from March to July 2002 between DEQ Staff and Mr. McCauley, he did not comply with the Regulation. Subsequently, DEQ staff sent a proposed Letter of Agreement to Mr. McCauley for his consideration on July 26, 2002. Through the Letter of Agreement, DEQ recommended resolutions for compliance with the Regulation by October 28, 2002. Mr. McCauley did not return a signed copy of the Letter of Agreement to DEQ.
5. On June 2, 2003, Mr. McCauley hired a contractor to test the corrosion protection system installed on the steel portions of the steel piping. The tests results, performed on June 12, 2003, indicated that the steel portions of the piping were not being protected from corrosion.
6. On November 19, 2003, DEQ staff sent a letter to Mr. McCauley requesting that he submit information documenting the corrective actions taken to bring the facility into compliance with the Regulation. Mr. McCauley did not submit any additional documentation to the DEQ.
7. On March 25, 2004, Mr. McCauley signed a Letter of Agreement with the DEQ. The Letter of Agreement required that all corrective actions to comply with the Regulation and

documentation supporting such actions be submitted to DEQ staff by June 17, 2004. Mr. McCauley failed to perform the required corrective actions as he agreed to do in the Letter of Agreement.

8. On July 9, 2004, DEQ staff issued a Notice of Violation (NOV) No. 04-07-VRO-2 to Mr. McCauley, for the apparent continuing violation of the Regulation. The NOV requested that Mr. McCauley respond to the Department by July 19, 2004. The violations noted in the NOV are as follows:

Tank number	1
Violation	1000
9 VAC 25-580-70. A Notification information	X
9 VAC 25-580-50 Corrosion protection	X
9 VAC 25-580-120 Compliance records (include overfill prevention)	X
9 VAC 25-580-140 Release detection for tanks and piping	X
9 VAC 25-590-10 et seq. Financial Responsibility	X

9. On August 5, 2004, DEQ staff met with Mr. McCauley to discuss possible remedies to the situation including a corrective action plan and the settlement of past violations. During the meeting, DEQ staff received an updated Form 7530 signed by Mr. McCauley. Additionally, DEQ staff verified the presence of overfill prevention equipment on the UST and cathodic protection equipment on the steel portions of the piping. Mr. McCauley agreed to perform the corrective actions necessary to comply with the Regulation.
10. On September 15, 2004, DEQ received copies of test results performed on the corrosion protection system installed on the steel portions of the steel piping. The tests results, performed on August 26, 2004, indicated that the steel portions of the piping were being protected from corrosion.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §§ 62.1-44.15 (8a) and (8d), orders Mr. McCauley and Mr. McCauley agrees that:

1. To remedy the violations described above and bring the Facility into compliance with

the Regulation, Mr. McCauley shall perform the actions described in Appendix A to the Order.

2. Mr. McCauley shall pay a civil charge of \$2,000.00, within 30 days of the effective date of the Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of the Commonwealth of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

3. Mr. McCauley shall also include his Social Security Number with the civil charge payment and shall note on the payment that it is being made pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. McCauley, for good cause shown by Mr. McCauley, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Mr. McCauley admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mr. McCauley consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mr. McCauley declares he has received fair and due process under the Virginia Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the State Water Control Law, and he waives the right to any hearing or other administrative

proceeding authorized or required by law or regulation and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Mr. McCauley to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Mr. McCauley shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Mr. McCauley must show that such circumstances resulting in noncompliance were beyond his control and not due to a lack of good faith or diligence on his part. Mr. McCauley shall notify the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. The reasons for the delay or noncompliance;
 - b. The projected duration of such delay or noncompliance;
 - c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. The timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director of the Regional Office in writing within 10 days of learning of any condition listed above, which Mr. McCauley intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Mr. McCauley. Notwithstanding the foregoing, Mr. McCauley agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
- a. Mr. McCauley petitions the Regional Director to terminate the Order after he has completed all requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. The Director or the Board terminates this Order in his or its whole discretion upon 30 days written notice to Mr. McCauley

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Mr. McCauley from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By his signature below, Mr. McCauley voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 8 day of Dec, 2004.


Robert G. Burnley, Director
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by P. Lee McCauley:

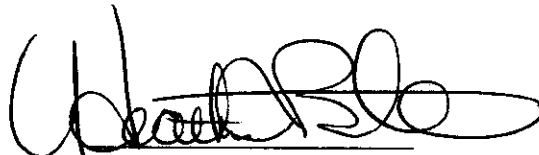
Date: 10/14/2004 By: P. Lee McCauley
P. Lee McCauley

Commonwealth of Virginia, City/County of Albemarle

The foregoing instrument was acknowledged before me this 14th day of October, 2004, by

Palmer Lee McCauley
(name)

Oct. 14, 2004.
Date


Notary Public

My commission expires:

Heather J. Burdick
NOTARY PUBLIC
Commonwealth of Virginia
My Commission Expires 12/31/08

Appendix A
Mr. P. Lee McCauley
UST Facility at 2042 Garth Road, Charlottesville, Albemarle County, VA

For the UST, Mr. McCauley shall:

- A. By October 30, 2004:
 - 1. Submit copies of release detection results for the UST for the month October 2004.
 - 2. Submit complete and acceptable financial responsibility documentation.
- B. By November 30, 2004, submit copies of release detection results for the UST for the month of October 2004.